

## § 245.103

are to be reported by the lessee railroad). Road miles consisting of jointly-owned track or track jointly operated under lease shall be reported by the railroad controlling operations over the track. Road miles for a given section of railroad should be reported by only one railroad.

(2) Road miles to be reported shall not include industrial track, yard tracks, sidings, and other tracks not regularly used by road trains operated in such specific service. The determination that a particular track segment qualifies as industrial track or yard track must be made on a reasonable and supportable basis. Road miles do not include track which was out of service for the entire calendar year that is the subject of the user fee report.

(e) Employee hours, as defined in § 245.5(a), shall be calculated by the railroad in accordance with the following considerations: Employees hours to be reported include the number of hours worked by all railroad employees, regardless of occupation, during the previous calendar year. Include all employees in the occupational categories shown in appendix D of the FRA Guide for Preparing Accident/Incident Reports. Employee hours do not include time paid but not actually worked, such as holidays, vacations, etc. Employee hours do not include hours worked by volunteers. Employee hours do not include hours worked by individuals not employed directly by the reporting railroad (i.e. contractor employees).

(f) In computing both train miles and road miles, fractions representing less than one-half mile shall be disregarded and other fractions considered as one mile.

(g) Each railroad subject to this part has a continuing obligation to assure that the information provided to FRA on Form 6180.91—Annual Report of Railroads Subject to User Fees is accurate. Should a railroad learn at a later date that the information provided was not correct, it shall submit a revised Form 6180.91 along with a letter explaining in detail the discrepancy.

(h) Each railroad subject to this part has an obligation to assure that the information provided to FRA under this

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part is consistent with information provided to FRA under other reporting requirements, in particular reports submitted under 49 CFR part 225—Railroad Accidents/Incidents: Reports Classification, and Investigations. The railroad shall fully explain and resolve any discrepancies.

(i) The FRA has prepared a questionnaire entitled “Written Questionnaire on Whether Your Company Is a ‘Railroad’ Subject to FRA User Fee Regulations” (FRA Form 6180.90) in order to assist in determining whether certain entities meet the definition of “railroad” included in § 245.5 or constitute railroads whose entire operations are confined within an industrial installation (“plant railroads”) excluded from this part under § 245.3. Copies of FRA Form 6180.90 are available from the Office of Safety, FRA, 400 Seventh Street, SW., Washington, DC 20590.

### § 245.103 Recordkeeping.

Each railroad subject to this part shall maintain adequate records supporting its calculation of the railroad’s total train miles for the prior calendar year, total road miles as of December 31 of the previous calendar year, and the total employee hours for the previous calendar year. Such records shall be sufficient to enable the FRA to verify the information provided by the railroad on FRA Form 6180.91—Annual Report of Railroads Subject to User Fees. Such records shall also be available for inspection and copying by the Administrator or the Administrator’s designee during normal business hours.

### § 245.105 Retention of records.

Each railroad subject to this part shall retain records required by § 245.103 for at least three years after the end of the calendar year to which they relate.

## Subpart C—User Fee Calculation

### § 245.201 User fee calculation.

(a) The fee to be paid by each railroad shall be determined as follows:

(1) After March 15th of each year (August 1st for the fiscal year ending September 30, 1992), FRA will tabulate the total train miles, total employee

hours, and total road miles for railroads subject to this part for the preceding calendar year. FRA's calculations will be based on the information supplied by railroads under §245.101 hereof, and other reports and submissions which railroads are required to make to FRA under applicable regulations (i.e. 49 CFR parts 225 and 228). At the same time, FRA will calculate the total cost of administering the Safety Act for the current fiscal year (other than activities described in section 202(a)(2) thereof) which will represent the total amount of user fees to be collected.

(2) Using tabulations of total train miles, total employee hours, total road miles, and the total cost of administering the Safety Act, FRA will calculate a railroad's user fee assessment as follows:

(i) The assessment rate per train mile will be calculated by multiplying the total costs of administering the Safety Act by 0.55 and then dividing this amount (i.e., fifty-five percent of the total amount to be collected) by the total number of train miles reported to the FRA for the previous calendar year. The result will be the railroad user fee assessment rate per train mile for the current fiscal year.

(ii) The assessment rate per employee hour will be calculated by multiplying the total costs of administering the Safety Act by 0.1 and then dividing this amount (i.e., 10 percent of the total amount to be collected) by the total number of employee hours reported to the FRA for the previous calendar year. The result will be the railroad user fee rate per employee hour for the fiscal year.

(iii) The assessment rate per road mile will be calculated in three steps. First, FRA will determine a preliminary assessment rate per road mile by multiplying the total costs of administering the Safety Act by 0.35 and dividing this amount (i.e., thirty-five percent of the total amount to be collected) by the total road miles reported to FRA for the previous calendar year. Second, FRA will adjust this preliminary rate per road mile for each light density railroad by multiplying the preliminary rate by the appropriate scaling factor identified in §245.5(h).

The result will be a reduced assessment rate per road mile for light density railroads. Third, FRA will adjust the preliminary assessment rate per road mile for all railroads except light density railroads by adding to their preliminary rate an incremental amount reflecting the reallocation of the relief provided to light density railroads under step 2 using the sliding scale. The incremental amount is calculated by subtracting (A) the total amount to be collected from light density railroads after application of the sliding scale from (B) the total amount that would have been collected from light density railroads using the preliminary assessment rate and developed under step 1 and (C) dividing the resulting amount by the total road miles reported to FRA by all railroads except light density railroads. The incremental amount is then added to the preliminary assessment rate for all railroads except light density railroads to derive the assessment rate per road mile for all railroads except light density railroads. The results will be a modified assessment rate per road mile for light density railroads qualifying under step 2 and a general assessment rate applicable to all other railroads. In those cases where the computed fee is less than the defined minimum, the net increase attributable to the application of the minimum standard is not included in the reallocation process under step 3 and is instead added to total collections.

(b) The user fee to be paid by each covered railroad is the greater of \$500.00 or the sum of the railroad's train miles times the assessment rate per train mile, the railroad's employee hours times the assessment rate per employee hour, and the railroad's road miles times the applicable assessment rate per road mile.

#### Subpart D—Collection Procedures and Duty To Pay

##### § 245.301 Collection procedures.

(a) After March 15th of each year (August 15th for the fiscal year ending September 30, 1992), FRA will publish in the FEDERAL REGISTER a notice containing FRA's preliminary estimates of the total user fee to be collected, the